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REGIONAL HEARING CLERK

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1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act ("the Act"), 42 U.S.C. § 7413(d).
2. This Complaint serves as notice that the United States Environmental Protection Agency (EPA) has reason to believe that Respondent has violated certain Standards of Performance for new Stationary Sources (NSPS) requirements at 40 C.F.R. Part 60, Subpart WWW, 40 C.F.R. § 60.750 et seq., and therefore is in violation of Section 111 of the Act, 42 U.S.C. § 7411. Furthermore, this Complaint serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413 (d) (2)(A), of EPA's intent to issue an order assessing penalties for such actions.
3. Pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), the Administrator and the Attorney General jointly determined that this matter, where the total penalty exceeds \$200,000 or where the first alleged date of the violation occurred more than 12 months prior to the initiation of the administrative action, was appropriate for administrative penalty action."

## Section II

### Parties

4. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region VII, is the Director of the Air, RCRA, and Toxics Division, EPA, Region VII.

5. The Respondent is Waste Management of Nebraska, Inc., Douglas County Recycling and Disposal Facility, Bennington, Nebraska, a corporation registered to do business in Nebraska.

## Section III

### Regulatory Framework

6. Section 111 (b) of the Act, 42 U.S.C. § 7411 (b), and the regulations promulgated pursuant thereto at 40 C.F.R., Part 60, Subpart WWW, apply to each owner or operator of a municipal solid waste (MSW) landfill that commenced construction, reconstruction or modification on or after May 30, 1991, including a landfill having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters.

### Violation

7. Respondent is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

8. Respondent operates a MSW landfill as defined at 40 C.F.R. § 60.751.

9. Subpart WWW applies to Respondent's MSW landfill at 14320 N. 216 street, Bennington, Nebraska.

10. On February 13, 2002, authorized representatives of EPA conducted an on-site inspection of Respondent's facility, and determined the facility's enclosed combustor was not operating, and had not been operating for approximately three days.

11. On April 10, 2002, Complainant issued to Respondent a Requirement to Provide Information pursuant to Section 114 of the Clean Air Act, requiring Respondent to provide certain information concerning the operation of Respondent's facility.

12. Respondent provided the above requested information by the letter dated April 29, 2002.

13. The Complainant hereby states and alleges that Respondent has violated the Clean Air Act and federal regulations promulgated pursuant to the Act as follows:

#### Count I

14. Paragraphs 5 through 12 above are incorporated herein by reference.

15. From on or about July 22, 2000, to February 13, 2002, Respondent's enclosed combustor was not operating for periods of time exceeding the one hour exception set forth in 40 C.F.R. § 60.755(e) for control devices as follows:

|            | <u>Date</u>              | <u>Duration</u> |
|------------|--------------------------|-----------------|
| Beginning: | July 22, 2000            | 75 hours        |
|            | September 26, 2000       | 14 hours        |
|            | April 16, 2001           | 13 hours        |
|            | May 31, 2001             | 44 hours        |
|            | September 16, 2001       | 2 hours         |
|            | October 24, 2001         | 12 hours        |
|            | October 25, 2001         | 13 hours        |
|            | February 6, 2002         | 155 hours       |
|            | <u>February 13, 2002</u> | <u>72 hours</u> |
| Total:     |                          | 400 hours       |

16. Respondent therefore violated Section 111 of the Act, 42 U.S.C. § 7411, and the regulation at 40 C.F.R. § 60.753(a).

#### Section IV

#### Relief

17. Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes a civil penalty of up to \$27,500 per day for each violation of CAA. The penalty proposed below is based upon the facts stated in this Complaint, and on the nature, circumstances, extent and gravity of the above cited violations in accordance with the Clean Air Act, Section 113(e), 42 U.S.C. § 7413(e) and the Stationary Source Civil Penalty Policy, October 25, 1991 ("Penalty Policy").

#### PROPOSED PENALTY

18. For the violations stated herein, it is proposed that a penalty of \$18,700 be assessed. The actual proposed penalty was determined by calculation in accordance with the statutory requirements of Section 113(e) of the CAA, 42 U.S.C. § 7413(e), and the enclosed Penalty Policy, by combining the factors in the policy, including the size of Respondents' business, the economic benefit of noncompliance and any willfulness of the Respondent. Below are short statements of the reasoning behind the various penalty factors and adjustments used in the calculation of the proposed penalty.

The economic benefit component, calculated under the Penalty Policy for Count I, is \$0, based on the cost of compliance being an insignificant amount.

The gravity component for Count I is \$17,700 for the enclosed combustor excess downtime, a failure to comply with the requirements of 40 C.F.R. § 60.753(a).

The size of violator component calculated under the Penalty Policy for this proposed penalty assessment is \$2,000, which is equal to no more than half the Preliminary Deterrence Amount (the total penalty) where the net worth of Respondent is unknown.

The total proposed penalty is derived by combining the total gravity component of \$17,700 with the economic benefit of \$0, plus the size of violator component of \$2,000 for a total penalty of \$18,700.

19. Respondent has the right, upon submittal of certified financial information, to consideration of Respondent's financial condition in mitigation of the proposed penalty insofar as is necessary to permit Respondent to continue in business.

20. The Complaint was drafted based upon the best information available to Complainant, including financial information, and in consideration of, and in accordance with the statutory requirements of Section 113(e) of CAA, 42 U.S.C. § 7413(e), and the enclosed Penalty Policy.

21. The proposed penalty set forth in paragraph 18 constitutes a demand *only* if Respondent fails to raise bona fide issues of ability to pay, or other bona fide affirmative defenses relevant to the determination of any final penalty.

22. Said issues of ability to pay or other affirmative defenses relevant to a final penalty, may and should be brought to the attention of the Complainant at the earliest opportunity in this proceeding.

23. Payment of the total penalty may be made by certified or cashier's check payable to the Treasurer, United States of America, and remitted to:

Mellon Bank  
EPA - Region VII  
Regional Hearing Clerk  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251

## NOTICE OF OPPORTUNITY TO REQUEST A HEARING

### Section V

#### Answer and Request for Hearing

24. Pursuant to Section 113(d)(2) of the CAA, Respondent has the right to request a hearing to contest any material fact contained in this Complaint. To preserve this right, Respondent must file a written answer and request for hearing with the Regional Hearing Clerk, United States Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101, within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing. Said answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint with regard to which Respondents have any knowledge, or shall clearly state that Respondents have no knowledge as to particular factual allegations in the Complaint. The answer shall also state:

- a. The circumstances or arguments that are alleged to constitute the grounds of defense;
- b. The facts that Respondents intend to place at issue; and
- c. Whether a hearing is requested.

Failure to deny any of the factual allegations in the Complaint constitutes an admission of the undenied allegations.

25. If Respondent requests a hearing, it shall be held and conducted in accordance with Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (40 C.F.R. Part 22) 64 Fed. Reg. 40138 (July 23, 1999). (Copy enclosed.)

26. If Respondent fails to file a written answer and request for a hearing within thirty (30) days of service of this Complaint and Notice of Opportunity for Hearing, such failure will constitute a binding admission of all of the allegations in this Complaint, and a waiver of Respondent's right to a hearing under the CAA. A Default Order may thereafter be issued by the Regional Administrator, and the civil penalties proposed therein shall become due and payable without further proceedings.

27. Respondent is advised that, after the Complaint is issued, the Consolidated Rules of Practice prohibit any ex parte (unilateral) discussion of the merits of any action with the EPA Regional Administrator, Chief Judicial Officer, Administrative Law Judge, or any person likely to advise these officials in the decision of this case.

In the Matter of  
Waste Management of Nebraska, Inc.  
Douglas County Recycling and Disposal Facility

Section VII

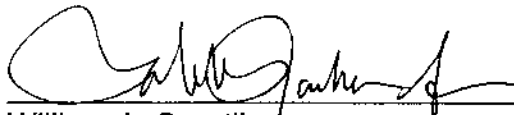
Settlement Conference

28. Whether or not a Respondent requests a hearing, a Respondent may request an informal settlement conference to discuss the facts of this case and settlement. To request an informal settlement conference, contact Henry F. Rompage, Attorney, Office of Regional Counsel, United States Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101, telephone 913/551-7280.

29. A request for an informal settlement conference does not extend the time to answer. Whether or not the informal settlement conference is pursued, to preserve the right to hearing a written answer and request for a hearing must be filed within thirty (30) days of service of this Complaint.

30. The EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of settlement. However, no penalty reduction will be made simply because an informal settlement conference is held. If settlement is reached, the parties will enter into a written Consent Agreement and a Final Order will be issued by the Regional Administrator, United States Environmental Protection Agency, Region VII. The issuance of such a Consent Agreement and Final Order shall constitute a waiver of Respondents' right to request a hearing on any matter stipulated to therein.

Date 1-22-03

  
William A. Spratlin  
Director  
Air, RCRA, and Toxics Division

  
HENRY F. ROMPAGE  
Attorney  
Office of Regional Counsel

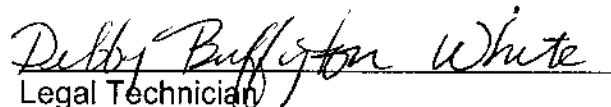
Enclosures: Consolidated Rules of Practice  
Clean Air Act Penalty Policy  
Penalty Policy Calculation  
Small Business Information Sheet  
SEC Notice

In the Matter of  
Waste Management of Nebraska, Inc.  
Douglas County Recycling and Disposal Facility

CERTIFICATE OF SERVICE

I certify that the original and one true and correct copy of the foregoing Complaint were hand-delivered to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101; and a true and correct copy of the foregoing Complaint, Consolidated Rules of Practice, the Clean Air Act Penalty Policy, Penalty Policy Calculation, the Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings and the Small Business Information Sheet were mailed by certified mail, return receipt requested on this 23<sup>rd</sup> day of January, 2003 to:

C.T. Corporation System  
Suite 500  
301 S. 13<sup>th</sup> Street  
Lincoln, Nebraska 68508-2578

  
Legal Technician

The following is an assessment for proposed penalties against Waste Management of Nebraska, Inc., Bennington, Ne. in connection with violations addressed in an amended FOV of July 8, 2002. The proposed penalties were calculated pursuant to the October 25, 1991 Clean Air Act Stationary Source Penalty Policy, and modifications including the May 9, 1997 Civil Monetary Penalty Inflation Rule. The following areas are subject to penalty:

- A. Economic Benefit:** \$0  
**B. Gravity Component:**

**Count I: Improper Operation and Maintenance of Control Equipment**

1. Actual or possible harm:
  - a. Amount above standard: \$ N/A
  - b. Toxicity of Pollutant N/A
  - c. Sensitivity of Environment \$ 5,000
  - d. Length of time of violation (400 hours) \$ 5,000
2. Importance to regulatory scheme: workplace standard \$ 5,000
3. Size of Violator: (Under \$100,000) \$2,000  
 Net Worth unavailable through D&B

**Total gravity:** \$ 17,000  
**Inflation Rule (multiply gravity by 1.10)** 18,700  
**Total Penalty (Gravity plus Economic Benefit)** \$ 18,700